SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 100

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

HAROLD BLOOM, GENERAL ASSIGNEE FOR THE BENEFIT OF CREDITORS OF PAVONE TEXTILE CORP.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

INDEX

	Original	Print
Record from Supreme Court of the State of New York, County of New York	1	1
Statement under Rule 234	1	1
Order authorizing record to be abridged and appeals to be consolidated	4	3
Stipulation to abridge record	4	3
Agreed statement of facts	6	4
Notice of appeal of State of New York	13	8
Notice of appeal of United States of America	15	10
Order dated October 14, 1949	17	11
Order appealed from	19	12
Opinion dated October 17, 1949	25	15
Opinion dated July 19, 1949	26	16
Affidavit as to opinion	30	18
Stipulation waiving certification	31	19
Notice of appeal to the Court of Appeals	33	19
Record from Supreme Court of New York, Appellate Division	35	21
Order of reversal	35	21
Opinion, Dore, J.	37	22

	Original	Print
Record from Supreme Court of New York, Appellate Division—Continued		
Stipulation waiving certification	40	24
Clerk's certificate (omitted in printing)	41	
Proceedings in the Court of Appeals of the State of New York	42	40
Opinion, Froessel, J.	43	25
Remittitur	46	27
Judgment on remittitur	50	29

Order allowing certiorari 31

a Court of Appeals, State of New York

In the Matter of the General Assignment for the Benefit of Creditors

of

PAVONE TEXTILE CORP., ASSIGNOR,

to

HAROLD BLOOM, ASSIGNEE-APPELLANT,

UNITED STATES OF AMERICA, CLAIMANT-RESPONDENT,

STATE OF NEW YORK, CLAIMANT-RESPONDENT

RECORD ON APPEAL

Gustave A. deLemos, Attorney for Assignee-Appellant, 270 Madison Avenue, New York, New York.

Irving H. Saypol, United States Attorney for the Southern District of New York, Attorney for United States of America, Claimant-Respondent, United States Court House, Foley Square, New York, New York.

Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for State of New York, Claimant-Respondent, The Capitol, Albany, New York.

1 New York Supreme Court, Appellate Division—First Department

In the Matter of the General Assignment for the Benefit of Creditors

of

PAVONE TEXTILE CORP., ASSIGNOR,

to

HAROLD BLOOM, ASSIGNEE-RESPONDENT,

UNITED STATES OF AMERICA, CLAIMANT-APPELLANT,

STATE OF NEW YORK, CLAIMANT-APPELLANT

STATEMENT UNDER RULE 234

The United States of America, by notice of appeal dated and filed on the 19th day of August, 1949, appeals from an order made by Mr. Justice Morris Eder and entered on the 2nd day of August, 1949. The State of New York, by notice of appeal dated the 18th day of October, 1949, filed on the 20th day of October, 1949, appeals from an order made by the same Justice on the 14th day

of October, 1949, and entered on the 17th day of October, 1949. The latter order amended the former order to include a recital of a claim on behalf of the Industrial Commissioner for post-assignment interest and that it was considered and overruled.

2 Both appeals are from so much of the orders which deny post-assignment interest on the respective tax claims.

Pavone Textile Corp. made and executed an assignment for the benefit of its creditors on the 26th day of April, 1948, which was duly filed in the office of the Clerk of the County of New York on the 17th day of May, 1948. Proof of claim for federal social security and withholding taxes containing a demand for payment of interest thereon to date of payment was filed by the United States Government with the assignee on October 8, 1948. Proof of claim for New York State unemployment insurance taxes, also containing a demand for interest to date of payment, was filed by the State of New York with the assignee on August 2, 1948.

The assignee filed his final account on the 8th day of February, 1949. On his motion for its judicial settlement, returnable on the 3rd day of March, 1949, an order was made on the 1st day of April, 1949 granting the motion to the extent of appointing a referee to take and state the account, hear any and all objections thereto, and take proof of all services rendered. The referee rendered and filed his report on the 23rd day of June, 1949 and on a motion for its confirmation, returnable on the 8th day of July, 1949, the United States of America interposed objections to the denial by the referee of post-assignment interest. On the 2nd day of August, 1949 an order was made and entered confirming the report in all respects.

3 On a motion by the State of New York to open its default on the 8th day of July, 1949, to vacate and set aside the order dated and entered on the 2nd day of August, 1949, insofar as the said order affected the Industrial Commissioner, and to direct the assignee to pay post-assignment interest on the claim for New York State unemployment insurance taxes, an order was made on the 14th day of August, 1949, and entered on the 17th day of August, 1949, denying the motion, for the specific relief requested, but under the prayer for such other and further relief as to the court may seem just and proper, the application was considered as one by the movant to amend the said order to include a recital of a claim for such interest and that it was considered and overruled. The order further recited that the amendment was granted in the interests of justice to enable the movant to have a right of appeal, similar to the right of the United States.

The full names of the parties are as above set forth. The assignee appeared by Gustave A. deLemos; the United States of America appeared by John F. K. McGohey, United States Attorney for the Southern District of New York; and the State of New York

appeared by Nathaniel L. Goldstein, Attorney General of the State of New York. During the pendency of the appeal, Irving H. Saypol was substituted as Attorney for the United States of America. There has been no other change of attorneys or parties herein.

4 In Supreme Court of New York

ORDER OF MR. JUSTICE MORRIS EDER AUTHORIZING RECORD TO BE ABRIDGED AND APPEALS TO BE CONSOLIDATED—November 29, 1949

Upon the annexed stipulation, dated November 29th, 1949, by and between all of the parties to this appeal, it is

ORDERED that the record on appeal be abridged to contain only the papers and documents enumerated by the parties, and it is further

ORDERED that the appeals of both the United States of America and the State of New York be consolidated in one record.

Dated: New York, New York, November 29, 1949.

M. E.,
J. S. C.

In Supreme Court of New York

STIPULATION TO ABRIDGE RECORD—November 29, 1949

WHEREAS, a question of law is the only issue presented in the above entitled appeals by the United States of America and the State of New York, and

5 WHEREAS, certain papers and documents are not deemed necessary to the proper determination of such appeals, it is therefore

STIPULATED AND AGREED between all of the parties hereto, subject to the approval of Mr. Justice Morris Eder, that the record be abridged and that it contain only the following papers and documents:

1. Notice of Appeal by United States of America, dated August 19, 1949;
2. Notice of Appeal by State of New York, dated October 18, 1949;
3. Order of Mr. Justice Morris Eder, dated October 14, 1949;
4. Opinion of Mr. Justice Morris Eder, dated October 14, 1949;
5. Order of Mr. Justice Morris Eder, dated August 2, 1949;
6. Opinion of Mr. Justice Morris Eder, dated July 19, 1949;
7. The within stipulation and the annexed agreed statement of facts;

and it is further

STIPULATED AND AGREED that the appeals of the United States of America and State of New York be consolidated in one record; and it is further

6 STIPULATED AND AGREED that an order to the foregoing effect may be entered by either of the parties without notice to the others.

Dated: New York, New York, November 29th, 1949.

GUSTAVE A. DELEMOS,
Attorney for Assignee-Respondent.

IRVING H. SAYPOL,
United States Attorney for Southern District of New York,
Attorney for United States of America, Claimant-Appellant.
By: CLARKE S. RYAN,
Assistant United States Attorney.

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York,
Attorney for Industrial Commissioner of the State of New York, Claimant-Appellant.
By: FRANCIS R. CURRAN,
Assistant Attorney General.

In Supreme Court of New York

AGREED STATEMENT OF FACTS—November 29, 1949

IT IS HEREBY STIPULATED AND AGREED by and between all of the parties hereto that the following is the agreed statement of facts to form part of the record on appeal herein:

7 1. The assignment was made on April 26, 1948 and filed on May 17, 1948 in the office of the Clerk of the County of New York.

2. The United States of America duly filed a claim with the assignee for social security and withholding taxes in the sum of $2,345.34, inclusive of penalties and interest to September 30, 1948. The claim, inclusive of penalties and interest up to the date of the filing of the assignment, amounted to $2,302.81 and that sum was heretofore paid pursuant to an order of this court, dated August 2, 1949. Post-assignment interest amounts to $162.81.

3. The Industrial Commissioner of the State of New York duly filed a claim with the assignee for New York State unemployment insurance taxes in the sum of $271.65, inclusive of interest to

August 15, 1948. The claim, inclusive of interest, up to the date of the filing of the assignment, amounted to $269.93 and the sum of $271.65 was heretofore paid pursuant to the same order of this court, dated August 2, 1949. Post-assignment interest amounts to $23.64 after crediting the assignee with $1.72.

4. The assignee filed his final account on February 8, 1949 and a supplemental account by authority of this court on or about April 1, 1949. The final and supplemental accounts showed a balance of $11,754.35 on hand for distribution to creditors. Tax claims amounted to $3,034.30, with interest to the date of the filing of the assignment, and wage claims entitled to a preference amounted to $1,270.72.

8 5. On April 1, 1949, after due notice to all interested parties, an order was made by Mr. Justice Morris Eder granting the assignee's motion to settle his final and supplemental accounts to the extent of appointing Max Hirson, 61 Broadway, New York, New York, as referee to take and state the accounts, hear any and all objections thereto, and take proof of all services rendered.

6. After hearings on May 11 and 18, 1949, the referee filed his report on June 23, 1949, the pertinent portions of which were as follows:

* * * * * * *

"30. There appears in Schedule 'E-1' of the Assignee's account a claim filed by the United States Government for social security and withholding taxes in the sum of Two Thousand Three Hundred Forty-five and 34/100 ($2,345.34) Dollars. The Assignee notes in his schedule 'plus interest as required by law'. At the hearings before me, the Assignee testified that the United States Government refused to come into the proceeding at this time to determine the question of interest and the allowability of its claim for interest, beyond the date of the assignment, but it reserves its right to object to the referee's report on application to confirm it before this Court.

"With respect to such claim, it must be noted that Section 13 of the Debtor and Creditor Law permits the filing and proving of claims against the estate which were absolutely
9 owing at the time of the assignment. The statute contemplates that the debt must be in existence at the time of the assignment in order that the claim may be provable.

Matter of Friedman Brothers, Inc., (1933) 150 Misc. 209, 269 N. Y. S., 177.

In Re Engelmeyer Baking Corporation, (1937) 251 App. Div. 738, 296 N. Y. S., 76.

The claim for interest accruing after the date of the assignment was not a liability which existed, and therefore, the claim by the United States Government should be limited to the amount due with such accrued interest to the date of assignment. This view is sustained by the recent decision of the Supreme Court of the United States.

The City of New York vs. Lewis H. Saper, as trustee in bankruptcy of Spotlight Productions, Inc.—No. 168.

State of New York vs. Leonard H. Carter, as trustee in bankruptcy of Union Fabrics, Inc.—No. 200.

The United States of America vs. Leonard H. Carter, as trustee in bankruptcy of Union Fabrics, Inc.—No. 201.

which appeared on the front page of the New York Law Journal of April 29, 1949, and which was decided March 7, 1949, wherein the Court held that interest on Federal, State and Municipal tax claims in a bankruptcy proceeding is allowable only to the date of filing of the petition, as the case of other debts, and not to the date of payment. Mr. Justice Jackson, who delivered the opinion of the Court, stated as follows:

'If the question were one of first impression to be decided in the light of the present statute alone, we should have no difficulty in affirming the court below. More than forty years ago Mr. Justice Holmes wrote for this Court that the rule stopping interest at bankruptcy had then been followed for more than a century and a half. He said the rule was not a matter of legislative command or statutory construction but, rather, a fundamental principle, of the English bankruptcy system which we copied (*Sexton vs. Dreyfuss*, 219 U. S. 339, 344). Our present statute contains no provision expressly repudiating that principle or allowing an exception in favor of tax claims. Every logical implication from relevant provisions is to the contrary. *Section 63 (a), (1), 11 U. S. C., Sec. 103 (a), (1)*, allows interest on judgments and written instruments only to date of bankruptcy. Section 63 (a), (5), 11 U. S. C., Sec. 103 (a), (5), allows interest only to that date on debts reduced to judgment after bankruptcy.'

"In the same manner there are no relevant statutes in our Debtor and Creditor Law which changes or alters the fundamental provisions of the insolvency proceeding which permits a debtor to discharge his obligations by transferring his assets for that purpose.

I have made the foregoing comment on this claim for the purpose of aiding the Court in anticipation of the
11 Government's claim and have allowed this claim with interest to the date of the assignment.

* * * * * * *

Dated, New York, June 23rd, 1949.

Respectfully submitted,

(S.) MAX M. HIRSON,
Referee."

7. After due notice to all interested parties, the assignee brought on a motion by order to show cause, returnable on July 8, 1949, to confirm the referee's report and to direct a distribution of the assets. On the return date, the United States of America filed objections to that part of the referee's report which denied post-assignment interest on its tax claims and a decision was handed down by Mr. Justice Morris Eder on July 19, 1949 (195 Misc. 702), confirming the report in all respects. An order was entered thereon on August 2, 1949 and the United States of America has duly appealed from so much of the order as directed the payment of interest only up to the date of the filing of the deed of assignment.

8. After due notice to all interested parties, the Industrial Commissioner of the State of New York brought on a motion by order to show cause, returnable on October 7, 1949, for an order opening his default on July 6, 1948, vacating and setting aside the order of Mr. Justice Morris Eder, dated August 2, 1949, insofar as the said order affected the Industrial Commissioner, and directing the assignee to pay to the said Industrial Commissioner the sum of
12 $23.64 as post-assignment interest. A decision embodied in a short form order was handed down by Mr. Justice Morris Eder on October 14, 1949, pursuant to which the motion to open the default and to vacate and set aside the order of August 2, 1949 was denied. However, under the prayer for such other and further relief as to the court may seem just and proper, the application was considered as one by the movant to amend the said order to include a recital of a claim by the Attorney General on behalf of the Industrial Commissioner that he is entitled to post-assignment interest and that it was considered and overruled, similarly as in the case of the United States. The State of New York has duly appealed from so much of the order dated October 14, 1949, which

amended the prior order dated August 2, 1949, as overruled the claim for post-assignment interest.

Dated: New York, New York, November 29, 1949.

IRVING H. SAYPOL,
United States Attorney for Southern District of New York,
Attorney for United States of America,
Claimant-Appellant.

By: CLARKE S. RYAN,
Assistant United States Attorney.

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York,
Attorney for Industrial Commissioner of the State of New York, Claimant-Appellant.

By: FRANCIS R. CURRAN,
Assistant Attorney General.

GUSTAVE A. DELEMOS,
Attorney for Assignee-Respondent.

13 Supreme Court of the State of New York, County of New York

[Title omitted]

NOTICE OF APPEAL OF STATE OF NEW YORK—October 18, 1949

SIRS:

PLEASE TAKE NOTICE that Edward Corsi, as Industrial Commissioner of the State of New York, a priority creditor for New York State unemployment insurance taxes in this proceeding, hereby appeals to the Appellate Division of the Supreme Court in and for the First Department, from an order made in the above proceeding on the 14th day of October, 1949 and entered in the Office of the Clerk of the County of New York on the 17th day of October, 1949, amending a prior order made and entered in this proceeding on the 2nd day of August, 1949, which said order appealed from amended the prior order to include a recital of a claim on behalf of the Industrial Commissioner for post assignment interest and a further recital overruling such claim for interest.

14 PLEASE TAKE FURTHER NOTICE that the appellant appeals from so much and such part of said order as overrules the claim of appellant for interest accruing from the date of the filing of the deed of assignment to the date of payment, and the appel-

lant does not appeal from any other part of said order, except as herein specifically set forth.

Dated: New York, N. Y., October 18, 1949.

Yours, etc.,

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York,
Attorney for the Industrial Commissioner,
Appellant, Office and P. O. Address,
342 Madison Avenue, New York 17, N. Y.

To: Hon. Archibald R. Watson, Clerk of the County of New York; Gustave A. deLemos, Attorney for Assignee, 270 Madison Avenue, New York 16, N. Y.; Hon. John F. X. McGohey, United States Attorney for the Southern District of New York, Attorney for United States Government, United States Court House, Foley Square, New York 7, N. Y.; Att.: Clarke S. Ryan, Asst. United States Attorney.

Supreme Court—New York County

[Title omitted]

NOTICE OF APPEAL OF UNITED STATES OF AMERICA—August 19, 1949

SIR:

PLEASE TAKE NOTICE, that the United States of America, a claimant in this proceeding, hereby appeals to the Appellate Division of the Supreme Court for the First Department, from the order made in this proceeding on the 2nd day of August, 1949, by the Hon. Morris Eder, Justice of the Supreme Court, and entered in the office of the Clerk of New York County, on the 2nd day of August, 1949, granting the motion to confirm the Report of Max Hirson, Esq., the referee herein, and to settle and allow the final account of the assignee herein.

PLEASE TAKE FURTHER NOTICE, that the United States of America appeals from so much of said order as directs payment of interest on the United States tax claims and penalties only in so far as interest accrued to the date of the filing of the general assign-
16 ment for the benefit of creditors.

Dated: New York, N. Y., August 19th, 1949.

Yours, etc.,
JOHN F. X. McGOHEY,
United States Attorney for the
Southern District of New York,
Attorney for United States,
Office and Post Office Address,
United States Court House,
Foley Square,
New York 7, N. Y.

To:
Gustave A. deLemos,
Attorney for Assignee,
270 Madison Avenue,
Borough of Manhattan,
City of New York.

17 Supreme Court—State of New York

Special Term, Part I—New York County

[Title omitted]

ORDER DATED OCTOBER 14, 1949

The following papers numbered 1 to 6 read on this motion submitted and referred on October 7, 1949.

Calendar No. 130.

	Papers Numbered
Notice of Motion and Affidavits Annexed Order to Show Cause and Affidavits Annexed (filed)	1 to 3
Answering Affidavits	5
Replying Affidavits	
Affidavits of Service	4
Filed Papers—Papers Numbered 1 to 15 Motion No. 153 of July 8, 1949 Order of August 2, 1949	6
Pleadings—Exhibits	
Stipulation—Referee's Report—Minutes	

Upon the foregoing papers this motion to open default and to vacate and set aside order of August 2, 1949, is denied.

18 However, under the prayer for such other and further relief as to the court may seem just and proper, the application is considered as one by the movant to amend the said order to include a recital of a claim by the attorney-general on behalf of the industrial commissioner that he is entitled to post assignment interest and that it has been considered and is overruled, similarly as in the case of the United States (Matter of Pavone Textile Corp. [Bloom], 90 N. Y. Supp., 2d 785). The amendment is granted in the interest of justice to enable the movant to have a right of appeal, similar to the right of the United States. This determination can in no way prejudice the assignee and the question is one of importance which should be presented to an appellate court.

Dated: October 14, 1949.

M. E.,
J. S. C.

19 In Supreme Court of New York

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, Pearl and Centre Streets, Borough of Manhattan, City of New York, on the 2nd day of August, 1949.

Present: HON. MORRIS EDER, *Justice*

In the Matter of the General Assignment for the Benefit of Creditors

of

PAVONE TEXTILE CORP., ASSIGNOR,

to

HAROLD BLOOM, ASSIGNEE

ORDER APPEALED FROM—August 2, 1949

A motion having come on to be heard before me for an order confirming the Report of Max Hirson, Es,., the Referee herein, dated the 23rd day of June, 1949, and settling and allowing the final account of Harold Bloom, Assignee herein, filed on the 8th day of February, 1949, now on reading the final account of Harold Bloom, the Assignee, filed on the 8th day of February, 1949, the petition of Harold Bloom, duly verified the 8th day of March, 1949, to supplement his account, the order to show cause dated the 8th day of February, 1949, the notice to creditors dated the 10th day of February, 1949, the affidavit of Rose C. Taten, duly sworn to the 24th
20 day of February, 1949, indicating service thereof, the petition of Gustave A. deLemos, Esq., verified the 8th day of March, 1949, the affidavit of Reuben Kirschstein, sworn to the 1st day of March, 1949, the order of reference dated the 1st day of April, 1949, and upon reading and filing the report of Max Hirson, Esq., the Referee herein, dated the 23rd day of June, 1949, the affidavit of Harold Bloom, sworn to the 23rd day of June, 1949, the order to show cause thereon dated the 23rd day of June, 1949, the notice to creditors dated the 24th day of June, 1949, the affidavit of Rose C. Taten, duly sworn to July 5th, 1949, indicating service thereof, the affidavit of Clarke S. Ryan, Esq., sworn to the 6th day of July, 1949, and upon filing the opinion of the Court, and Gustave A. deLemos, Esq., appearing in support of said motion, and Clarke S. Ryan, Esq., Assistant United States Attorney, Southern District of New York, appearing in opposition thereto, it is

ORDERED, that the said motion be and the same hereby is granted in all respects as prayed for, and it is further

ORDERED, that the report of Max Hirson, Esq., Referee herein, dated the 23rd day of June, 1949, be and the same hereby is confirmed in all respects as filed, and it is further

ORDERED, that the petition of Harold Bloom, for leave to supplement his account as Assignee herein, be and the same hereby is granted, and it is further

21 ORDERED, that the account of Harold Bloom, Assignee, herein, as therein stated and supplemented, be and the same hereby is settled and allowed, and it is further

ORDERED, that out of the balance in the hands of the Assignee amounting to the sum of Eleven thousand seven hundred fifty-four and 35/100 ($11,754.35) Dollars, said Assignee be and he hereby is directed to pay to himself the sum of Six hundred and ninety-two and 37/100 ($692.37) Dollars as and for his fees as Assignee, and the sum of One thousand five hundred ($1,500.00) Dollars to Gustave A. deLemos, Esq., as attorney, and the sum of Three hundred ($300.00) Dollars to Reuben Kirschstein, as Accountant as and for services rendered in behalf of the said Assignee, and it is further

ORDERED, that Harold Bloom, the Assignee herein, out of the excess then remaining, make the following payments:

Max Hirson, Esq., Referee	$
Acme Reporting Service	116.00
United States Government, Office of Collector of Internal Revenue, inclusive of penalties and interest up to date of filing of assignment	2,297.60
United States Government, Commissioner of Internal Revenue, inclusive of penalties and interest up to date of filing of assignment	5.21
New York State, Division of Placement and Unemployment Insurance, inclusive of penalties 22 and interest up to the date of filing assignment	271.65
New York State Corporation Tax Bureau, inclusive of penalties and interest up to date of filing of assignment	57.29
New York City Department of Finance, inclusive of penalties and interest up to date of assignment	402.55
R. N. Andrews, 59 Stevens Road, Cranston 10, R. I.	210.96
Emil Koltai, 118 West 72nd St., N. Y. C.	227.85
Robie Watson, Newport, Me.	22.32
M. Pollinque, Lafayette, La.	68.06
W. D. Fugatt, P. O. Box 935, Oklahoma City, Okla.	36.82
Joe H. Lunsford, 2953 Merrill Ave., Huntington, W. Va.	21.62
The Van Burens, 1710 Jackson St., Dallas, Texas	18.18

Henry Mueller, 1620 E. 14th St., Brooklyn 29, New York	20.50
LaMarr Coon, 2200 East 3380 South, Salt Lake City, Utah	44.41
Mitchell A. Burkush, 1165 Broadway, N. Y. C.	300 00
George B. Mitnick, 1165 Broadway, N. Y. C.	300.00

and it is further

ORDERED, that renewal premium due on the Assignee's bond shall be pro rated to the time of the discharge of the Assignee under said bond and paid, and it is further

23 ORDERED, that Harold Bloom, Assignee, out of the excess then remaining shall retain as a reserve fund pending the prosecution of any appeal the United States of America may take in connection with this order, the following amounts:

As and for interest on Federal Government claims, from May 17th, 1948, until June 30th, 1951	$ 413.34
For disbursements and counsel fees	$1,000.00

and it is further

ORDERED, that Harold Bloom, the Assignee herein, out of the excess then remaining in the hands of the Assignee be and hereby is directed to distribute same among all the general creditors herein, pro rata, in accordance with the claims as provided by law, and it is further

ORDERED, that in the event that the United States of America does not file an appeal within the time limited by law, then Harold Bloom, Assignee herein, is hereby directed to distribute the reserve herein set up to the general creditors as hereinabove provided, and it is further

ORDERED, that in the event the United States of America shall appeal from this order, then upon the final determination of such appeal, the Assignee shall apply to the Court for further direction in connection with the distribution of the said reserve fund, and it is further

ORDERED, that in the event the United States of America shall appeal from this order, the Assignee is directed to file a new bond in the reduced amount of One thousand five hundred
24 ($1,500.00) Dollars, and upon the filing of same, that the existing bond shall be cancelled, and it is further

ORDERED, that the Assignee take such sufficient voucher for each payment made, and if after reasonable diligence any of the persons entitled to share in such distribution cannot be found, or decline or neglect to accept such share, then the share so belonging to such person shall be deposited with the City Treasurer to the credit of such person, and it is further

ORDERED, that upon compliance with the foregoing provision, the said Assignee shall, upon presenting its proof of the same to this Court, be entitled to an order releasing him and releasing the National Surety Corporation, the surety on the bond of the Assignee, from all matters included in the said account as to all creditors who have appeared, and to such creditors as have not appeared after due notice, and as to such creditors as have not presented their claims after due notice, and it is further

ORDERED, that such application hereinbefore mentioned may be made without further notice, and it is further

ORDERED, that the Assignee is authorized to destroy and abandon all the books and records of the Assignee herein.

Enter:

MORRIS EDER,
J. S. C.

25

IN SUPREME COURT OF NEW YORK

OPINION DATED OCTOBER 17, 1949

THE NEW YORK LAW JOURNAL

Monday, October 17, 1949

Page 860

Decisions

SUPREME COURT—SPECIAL TERM

PART I

BY MR. JUSTICE EDER

In re Pavone Textile Corp'n (Bloom)—Motion to open default and to vacate and set aside order of August 2, 1949, is denied. However, under the prayer for such other and further relief as to the court may seem just and proper, the application is considered as one by the movant to amend the said order to include a recital of a claim by the attorney-general on behalf of the industrial commissioner that he is entitled to post assignment interest and that it has been considered and is overruled, similarly as in the case of the United States (Matter of Pavone Textile Corp'n [Bloom], 90 N. Y. Supp., 2d 785). The amendment is granted in the interest of justice to enable the movant to have a right of appeal, similar to the right of the United States. This determination can in no way prejudice the assignee and the question is one of importance which should be presented to an appellate court.

26 IN SUPREME COURT OF NEW YORK

OPINION DATED JULY 19, 1949

THE NEW YORK LAW JOURNAL

Wednesday, July 20, 1949

(Reported in 195 Misc. 702)

Page 111

By Mr. Justice Morris Eder
New York County

SUPREME COURT—SPECIAL TERM

PART I

Pavone Textile Corp'n v. Bloom—This proceeding, a general assignment for the benefit of creditors, was instituted pursuant to the provisions of article 2 of the Debtor and Creditor Law.

The assignee filed his final account and report and applied for an order settling and allowing the same. A referee was designated to take and state the account, hear any and all objections thereto and take proof of all services rendered and report with his opinion thereon. The referee has made and filed his report containing divers recommendations.

On motion to confirm the report objection is entered by the United States on claims for taxes, it being the contention of the objector that the referee erred on the question of interest, that is, in allowing interest on the claims only to the date of the making of the assignment and in refusing to allow interest on the claims beyond the date of the assignment. It is therefore urged that the report be disapproved in so far as it denies interest on said
27 claims accruing after the date of the assignment, and that interest be allowed thereon until the date of payment.

The referee in making the ruling relied on City of New York v. Saper (336 U. S., 328). That case arose in a bankruptcy proceeding under the national Bankruptcy Act and involved a construction of that statute with respect to the right of the United States to claim and receive interest on tax claims to the date of payment. It was there held that no provision of law permits post-bankruptcy interest on tax claims and that they are to be treated the same as other debts and that tax claims against a bankrupt bear interest only until the date of bankruptcy, i. e., the date of the filing of the petition, and not until payment.

Objector contends, as I comprehend it, that the ruling in the Saper case is inapplicable and is not controlling here for the reason

that it involved a construction of the national Bankruptcy Act, whereas a general assignment for the benefit of creditors is a non-bankruptcy proceeding, a special proceeding under state law.

Of course, in the strict sense, a general assignment for the benefit of creditors is not a bankruptcy proceeding for its lacks a fundamental factor of such a proceeding, namely, the benefit which is accorded to the debtor in a bankruptcy proceeding in the granting to him of a discharge from all of his provable debts, whereas the making by the debtor of a general assignment for the benefit of his creditors does not result in discharging him
28 from his debts; he continues to remain liable for the unpaid balance of the debt and the creditor may resort to and pursue such remedies to compel payment of the balance as may be available, unaffected by the general assignment, unless by statute or valid agreement of the creditor the debt, is released (5 C. J., sec. 468, p. 1282; sec. 516, p. 1302; 6 C. J. S., sec. 395, p. 1427), and it has been said that the only effect of the assignment is to prevent a judgment creditor from levying upon the assigned property (Swift & Co. v. Novotny, 28 N. Y. Supp., 2d 562).

Article 2 of the Debtor and Creditor Law, relating to a general assignment for the benefit of creditors, makes no provision for the discharge of the debtor-assignor upon making the assignment, an anomalous situation, for the historical note of the Board of Statutory Consolidation, 1907 (p. 728), states that article 2 applies to cases where an insolvent debtor without the concurrence of his creditors assigns his property for the benefit of his creditors "for the purpose of being discharged from his debts."

But though in its true sense a general assignment for the benefit of creditors is not a bankruptcy proceeding, its provisions appear to be patterned after the national Bankruptcy Act, and to that extent a general assignment for the benefit of creditors may be viewed as a quasi-bankruptcy proceeding, at least with respect to a construction of some of its provisions.

Comparing section 13 of the Debtor and Creditor Law, relating to debts which may be proved against the assignor's estate,
29 with the provisions of section 103 (a) (1) to (4) of the Bankruptcy Act (11 U. S. C. A.), we find that both read substantially alike, except that while section 103 (a) (1) contains a provision that a debt may be proved owing at the time of the filing of the petition, with any interest thereon, section 13 of the Debtor and Creditor Law makes no mention of interest or for allowing interest thereon.

In insolvency proceedings the rule has been followed that in the distribution of the estate of an insolvent, interest should be computed to the time of the institution of the insolvency proceeding

upon all provable debts (Matter of Murray, 6 Paige Ch., N. Y., 204; 32 C. J., sec. 178, p. 884; 44 C. J. S., sec. 14, p. 378).

Considering the above mentioned rule relating to insolvent estates and the similarity of language in section 13 of the Debtor and Creditor Law and section 103 (a) (1) to (4) of the national Bankruptcy Act, it seems to me that a like rule should govern as to computation of interest on provable debts in a general assignment proceeding under article 2 of the Debtor and Creditor Law as is applied in the case of a bankruptcy proceeding under the national Bankruptcy Act and that interest on the provable debt should be allowed only to the date of the making of the general assignment for the benefit of creditors.

The objection is, accordingly, overruled.

The recommendations of the referee are approved and the report is confirmed. The referee's compensation will be fixed in the order to be entered hereon.

Settle order.

30 IN SUPREME COURT OF NEW YORK

AFFIDAVIT AS TO OPINION

STATE OF NEW YORK,
County of New York, ss:

SAMUEL STERN, being duly sworn, deposes and says that he is an Assistant Attorney General in the office of Nathaniel L. Goldstein, Attorney General of the State of New York, attorney for one of the appellants, and that no opinions or decisions were rendered in this proceeding other than the opinions of Mr. Justice Morris Eder dated July 19 and October 14, 1949, as hereinbefore printed. The opinion dated July 19, 1949 is reported in 195 Misc. 702.

SAMUEL STERN.

Sworn to before me this 16th day of December, 1949.

BENEDICT FRANCHINA,
Notary Public,
State of New York.

Qualified in N. Y. Co. No. 31-1295600;
Cert. filed with City Register N. Y. Co.;
Commission expires March 30, 1951.

31-32 IN SUPREME COURT OF NEW YORK

STIPULATION WAIVING CERTIFICATION—December 16, 1949

IT IS HEREBY STIPULATED by and between the parties hereto that the foregoing are true copies of the papers on appeal constituting the abridged record authorized by the court, the originals of which are on file in the office of the Assignment Clerk of the County of New York, and certification by said Clerk is hereby waived, and that any papers recited in the orders dated August 2, 1949 and October 14, 1949 and not printed as a part of this record may be used upon the argument herein upon this appeal and submitted to the Court.

Dated: New York, New York, December 16, 1949.

IRVING H. SAYPOL,
United States Attorney for Southern District of New York, Attorney for United States of America, Claimant-Appellant.

By: CLARKE S. RYAN,
Assistant United States Attorney.

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York, Attorney for Industrial Commissioner of the State of New York, Claimant-Appellant.

By: FRANCIS R. CURRAN,
Assistant Attorney General.

GUSTAVE A. DELEMOS,
Attorney for Assignee-Respondent.

33 SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

In the Matter of the General Assignment for the Benefit of Creditors of

PAVONE TEXTILE CORP., ASSIGNOR,

to

HAROLD BLOOM, ASSIGNEE

NOTICE OF APPEAL TO COURT OF APPEALS—June 16, 1950

SIRS:

PLEASE TAKE NOTICE, that Harold Bloom the Assignee above named hereby appeals to the Court of Appeals of the State of New York, from the order made in the Appellate Division, Su-

preme Court, First Judicial Department, and entered in the office of the Clerk of the said Appellate Division on the 3rd day of May, 1950, which said order reversed so much of an order of this Court made and duly entered in the Office of the Clerk of the County of New York, on the 17th day of October, 1949, amending an order of this Court duly entered in the Office of the Clerk of the County of New York, on the 2nd day of August, 1949, as over-ruled the claim of the State of New York for interest accruing from the date of the filing of the deed of assignment to the date of payment, and which said order reversed so much of the
34 order of this Court duly entered in the Office of the Clerk of the County of New York, on the 2nd day of August, 1949, as directed payment of interest on the United States tax claim and penalties only to the date of the filing of the general assignment for the benefit of creditors, and from each and every part of said order of reversal.

Dated, New York, June 16th, 1950.

Yours, etc.,

GUSTAVE A. DELEMOS,
Attorney for Assignee,
Office & P. O. Address,
270 Madison Avenue,
Borough of Manhattan, 16,
City of New York.

To:
Hon. Archibald R. Watson,
Clerk of the County of New York.

Hon. Irving H. Saypol,
U. S. Attorney for the Southern District of New York,
Attorney for United States,
U. S. Courthouse, Foley Square,
Borough of Manhattan 7, New York.

Hon. Nathaniel L. Goldstein,
Attorney General for the State of New York,
Attorney for Industrial Commissioner of the
State of New York,
The Capitol,
Albany, New York.

35 IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

ORDER OF REVERSAL—April 25, 1950

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 25th day of April, 1950.

Present—Hon. Edward S. Dore, Justice Presiding; Hon. Albert Cohn, Hon. Joseph M. Callahan, Hon. John Van Voorhis, Hon. Bernard L. Shientag, Justices.

3263

3264

In the Matter of the General Assignment for the benefit of Creditors of

PAVONE TEXTILE CORP., ASSIGNOR,

to

HAROLD BLOOM, ASSIGNEE-RESPONDENT,

UNITED STATES OF AMERICA, CLAIMANT-APPELLANT,

STATE OF NEW YORK, CLAIMANT-APPELLANT

An appeal having been taken to this Court by the claimant State of New York from so much of an order entered in the Supreme Court, New York County, on the 17th day of October, 1949, amending an order of said Court entered on the 2nd day
36 of August, 1949, as overruled said appellant's claim for interest accruing from the date of the filing of the deed of assignment to the date of payment; and an appeal having been taken by the claimant United States of America from so much of the said order entered on the 2nd day of August, 1949 as directed payment of interest on the United States tax claim and penalties only to the date of the filing of the general assignment for the benefit of creditors; and said appeal having been argued by Samuel Stern, Esq., Assistant Attorney General of the State of New York, of counsel for the appellant, State of New York; by John D. Kelly, Esq., Assistant United States Attorney, of counsel for the appellant United States of America; and by Gustave A. deLemos, Esq., attorney for the assignee, respondent; and due deliberation having been had thereon and on the opinion of this court filed herein, it is unanimously

ORDERED that the orders so appealed from be and the same are hereby reversed on the law with one bill of twenty ($20.00) dollars costs and disbursements to the appellants, and it is further

ORDERED that the United States of America and State of New York are both entitled to post assignment interest on their respective claims.

Enter

E. S. D.

37 IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

OPINION

DORE, J.:

In this general assignment proceeding for the benefit of creditors, the United States and the State of New York severally appeal from so much of two orders of Special Term as disallowed interest from date of assignment to date of distribution on the claim of the United States for social security and withholding taxes, and the claim of New York State for unemployment insurance taxes. The facts are not in dispute. The sole issue is one of law; viz., whether in a general assignment for the benefit of creditors the United States and the State of New York are entitled to *interest* on tax claims not only to the date of the assignment but to the date of distribution.

Such post assignment interest has now been questioned since the Supreme Court of the United States in City of New York v. Saper, 336 U. S. 328, has withheld post bankruptcy interest on all tax claims. That decision, however, was grounded on Congressional intent found in amendments to the Bankruptcy Law by the Chandler Act of 1938, 52 Stat. 840, placing tax claims in bankruptcy proceedings on a basis in many respects comparable to general claims.

In state insolvency proceedings, however, the contrary rule still survives and the United States by virtue of Section 3466 Revised Statutes (31 USC 191) has an absolute priority unlimited by state law. In Matter of Lincoln Chair & Novelty Co., Inc., 274 N. Y. 353, United States tax claims were accorded priority over the New York State claim for taxes in a voluntary assignment for the benefit of creditors. In the Matter of Kupshire Coats,
38 Inc., 272 N. Y. 221, in the case of such an assignment a United States tax claim was preferred over wage claims which were a first priority under Section 22 of the Debtor and Creditor Law. Finally, in Matter of T. J. Simpson, Inc. v. United States, 258 App. Div. 148, this court held the United States entitled to penalties *and interest* on its tax claim in a voluntary assignment proceed-

ing. In the Simpson case (*supra* at p. 150), Mr. Justice Cohn writing for this unanimous court said:

> "That all claims of the United States in a voluntary assignment have preference over all other claims, including wages, and that the Bankruptcy Act only applies to cases of bankruptcy and to proceedings in the bankruptcy court has become the recognized rule in this State. [citing cases]
>
> * * * * *
>
> "Accordingly, we conclude that the mandate of Section 3466 of the Revised Statutes is absolute regarding any claims on the part of the United States government for taxes, interest and penalties where a voluntary assignment for the benefit of creditors has been made, and that by virtue of the terms of that statute any such claim presented by the Federal government must be satisfied first."

In our opinion we must continue to allow first priority to the United States on its tax claims in assignments for the benefit of creditors, including post assignment interest. Any limitation whatsoever on priority claims of the United States must be accomplished in assignment proceedings, as it was accomplished
39 in bankruptcy proceedings, through Congressional legislation and not by judicial decree.

The claim of the State of New York for post assignment interest on its unemployment insurance taxes must be determined under Section 13 of the Debtor and Creditor Law and Sections 570 and 574 of the Labor Law. Section 13 is a general statute relating to debts provable against the insolvent estate.

Until the State legislature limits claims of the State of New York in general assignment proceedings, such claims must receive priority. Moreover, Section 570 of the Labor Law provides that interest on unemployment insurance taxes "shall be assessed, collected and paid as part of the payment required to be made by the employer to the fund." Section 574 of the Labor Law specifically provides that "in the event of * * * assignment for benefit of creditors of any employer, contributions then and thereafter due from such employer under this article, *together with interest* and penalties thereon, shall * * * have priority over all other claims, except taxes due the United States and wages due for employment performed within the three months preceding such event * * *." (italics ours)

In the appeals before us, the relevant statutes compel allowance of post assignment interest on the claims of the United States and the State of New York.

The orders so far as appealed from should be reversed and post assignment interest allowed on the claims of the United States and State of New York.

All Concur.

40 In Supreme Court of New York, Appellate Division

STIPULATION WAIVING CERTIFICATION TO THE COURT OF APPEALS—October 3, 1950

Pursuant to Section 170 of the Civil Practice Act it is hereby stipulated that the foregoing consists of true and correct copies of the record on appeal to the Appellate Division of the Supreme Court, First Department, notice of appeal to the Court of Appeals, order appealed from, and opinion of said Appellate Division now on file in the office of the Clerk of the County of New York and certification thereof by the Clerk, pursuant to Section 616 of the Civil Practice Act, is hereby waived.

Dated, New York, October 3, 1950.

GUSTAVE A. DELEMOS,
Attorney for Assignee-Appellant.

IRVING H. SAYPOL,
United States Attorney for
Southern District of New York,
Attorney for United States of America,
Claimant-Respondent.

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York,
Attorney for State of New York,
Claimant-Respondent.

41 Clerk's Certificate to foregoing transcript omitted in printing.

42 Clerk's Certificate to following paper omitted in printing.

43 In the Court of Appeals of New York

In the Matter of the General Assignment for the Benefit of Creditors of PAVONE TEXTILE CORP., Assignor, to HAROLD BLOOM, Assignee, Appellant. UNITED STATES OF AMERICA, et al., Claimants, Respondents.

OPINION—Decided March 8, 1951

FROESSEL, *J.*:

In this proceeding, in which the assignor made a general assignment for the benefit of creditors, the only issue presented to us for determination is whether the respondents, the United States of America and the State of New York, are entitled to interest on their tax claims to the date on which the assignment was filed or to the date of payment of such claims. The claim of the United States is for social security and withholding taxes, and that of New York for unemployment insurance taxes.

The general rule is well settled that creditors are not entitled to post-assignment interest where the proceeds are insufficient to pay all creditors in full, because the "delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate"; this general rule applies as between preferred and unpreferred creditors (*Thomas* v. *Western Car Co.*, 149 U. S. 95, 116-117; *People* v. *American Loan & Trust Co.*, 172 N. Y. 371, 379, motion for reargument denied 177 N. Y. 467; *Matter of People*
44 *[Norske Lloyd Ins. Co.]*, 249 N. Y. 139, 146-148; *United States Fidelity & Guar. Co.* v. *Carnegie Trust Co.*, 161 App. Div. 429, affd. 213 N. Y. 629; *Matter of Murray*, 6 Paige Ch. 204).

In bankruptcy proceedings, the Supreme Court of the United States, despite earlier decisions in the lower Federal courts to the contrary, has definitely ruled that, under existing statutes, post-bankruptcy interest does not accrue on tax claims, pointing out that the rule stopping interest at bankruptcy is a fundamental principle of the English bankruptcy system which we copied more than two centuries ago (*City of New York* v. *Saper*, 336 U. S. 328; *Sexton* v. *Dreyfus* 219 U. S. 339, 344; 2 Blackstone's Comm., p. 488). As long ago as *Ex Parte Bennet* (2 Atk. 527, 528 [1743]), Lord Hardwicke said: "Commissioners, after a man becomes a bankrupt, compute interest upon debts no lower than the date of the commission, because it is a dead fund, and in such a shipwreck, if there is a salvage of part to each person, in this general loss, it is as much as can be expected."

In view of these decisions, we conclude that post-assignment interest is not recoverable in the case at bar. We are reinforced in this conclusion by the language of the Federal priority statute, which clearly has application here (*Matter of Kupshire Coats, Inc.*, 272

N. Y. 221, 224; *Matter of Lincoln Chair & Novelty Co.*, 274 N. Y. 353, 356; *Matter of Gruner*, 295 N. Y. 510, 520-521, motion for reargument denied 296 N. Y. 668): "Whenever any person indebted to the United States is insolvent * * * the *debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor,* not having sufficient property to pay all his debts, *makes a voluntary assignment thereof * * * as to cases in which an act of bankruptcy is committed.*" (U. S. Rev. Stat., § 3466; U. S. Code, tit. 31, § 191; emphasis supplied.) The word "debts" in this statute has been held to include taxes (*United States* v. *Waddill, Holland & Flinn, Inc.*, 323 U. S. 353). The statute clearly extends the Federal priority in bankruptcy proceedings to assignment proceedings, and, inasmuch as the priority in bankruptcy does not include post-bankruptcy interest (*City of New York* v. *Saper, supra*) so the priority in assignment proceedings does not include post-assignment interest.

A similar disposition must be made of the New York claim. We have already referred to the general common-law rule, which stops interest at the date of the assignment. Moreover, a comparison of the related New York assignment statutes and the Federal Bankruptcy Act indicates that they are closely parallel. Under the Bankruptcy Act the United States, as well as a State or political subdivision thereof, is given priority among creditors after payment of costs, expenses and wage claims (U. S. Code, tit. 11, § 104), and under the New York statutes, the State enjoys an analogous
45 priority, but after the United States (Debtor and Creditor Law, §§ 22, 23; Labor Law, § 574). The similarity of the Federal and State statutes as to provable debts may also be noted (U. S. Code, tit. 11, § 103; Debtor and Creditor Law, § 13). Precisely as did the United States with respect to bankruptcy, as indicated in the *Saper* case (*supra*), so has New York indicated that as to post-assignment interest it is to be treated on a par with other creditors. (See *United States Fidelity & Guar. Co.* v. *Carnegie Trust Co. supra; People* v. *American Loan & Trust Co., supra; Matter of People* [*Norske Lloyd Ins. Co.*], *supra.*)

The argument of the respondent State of New York that section 574 of the Labor Law makes absolute and mandatory the payment of post-assignment interest is not persuasive. This statute does not allow post-assignment interest; it simply provides that the State's priority as to unemployment insurance contributions includes "any" interest on said contributions to which the State may be entitled. As to contributions due up to the date of the filing of the assignment, the State is entitled to interest to the time of filing; as to contributions "thereafter due", no interest is allowable. The use of the words "any interest * * * thereon" is clear recognition that all of the contributions referred to in section 574 do not bear

interest, as, for example, contributions which have accrued in part before the filing of the assignment but are not due until after such filing. Finally, statutes making interest a part of the tax (such as Labor Law, § 570, where interest at 9% is allowed; U. S. Code, tit. 26 § 1420, subd. [b]; § 1627) are given due effect by allowing interest to the time of filing the assignment; thereafter the general rule as to post-assignment interest prevails in the absence of any statute expressly providing for such interest.

The rationale of the authorities hereinbefore cited is sound; they follow the long-established common-law rule, since no statute provides for the payment of post-bankruptcy or post-assignment interest; they harmonize the rules in bankruptcy and assignment proceedings; and they achieve a result that is just, fair and equitable. To allow post-assignment interest on tax claims at variable and substantial rates to run on throughout the course of a lengthy assignment proceeding, and thereby consume all or much of the funds available, to the detriment of the other creditors, it is in accord with neither law nor equity.

Accordingly, the order of the Appellate Division should be reversed, and the orders of Special Term affirmed, with costs in this court and in the Appellate Division.

LOUGHRAN, *Ch. J.*, LEWIS, CONWAY, DESMOND, DYE and FULD, *JJ.*, concur.

Ordered accordingly.

46 Court of Appeals

REMITTITUR—March 8, 1951

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 8th day of March in the year of our Lord one thousand nine hundred and fifty-one, before the Judges of said Court.

Witness,

THE HON. JOHN T. LOUGHRAN,
Chief Judge, Presiding.
RAYMOND J. CANNON, *Clerk*.

REMITTITUR—March 9, 1951

47 In the Matter of the General Assignment for the Benefit of Creditors of PAVONE TEXTILE CORP., ASSIGNOR,

to

HAROLD BLOOM, APPELLANT,

UNITED STATES OF AMERICA, RESPONDENT,

STATE OF NEW YORK, RESPONDENT

Be it Remembered, That on the 9th day of October in the year of our Lord one thousand nine hundred and fifty, Harold Bloom, the appellant—in this cause, came here unto the Court of Appeals, by Gustave A. deLemos, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And United States of America and State of New York, the respondents in said cause, afterwards appeared in said Court of Appeals by Irving H. Saypol, United States Attorney, and Nathaniel L. Goldstein, Attorney General.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

48 Whereupon, The said Court of Appeals having heard this cause argued by Messrs. John D. Kelly and Samuel Stern, of counsel for the respondents submitted for the appellant, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is reversed and orders of the Special Term affirmed, with costs in this Court and in the Appellate Division.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

49 Therefore, it is considered that the said order be reversed and orders of the Special Term affirmed, with costs &c., as aforesaid

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, March 9, 1951.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
[SEAL.] *Clerk.*

50 At a Special Term Part II of the Supreme Court, New York County, held in and for the County of New York, at the County Courthouse in the City of New York, State of New York, on the 20th day of March, 1951.

Present: HON. AARON J. LEVY, *Justice.*

In the Matter of the General Assignment for the Benefit of Creditors

of

PAVONE TEXTILE CORP., ASSIGNOR

to

HAROLD BLOOM, ASSIGNEE

JUDGMENT ON REMITTITUR—March 20, 1951

The above named assignee having appealed to the Court of Appeals of the State of New York, from the order of reversal of the Appellate Division of the Supreme Court, First Department, entered in the office of the Clerk of the said Appellate Division on the 3rd day of May, 1950, reversing so much of an order of this Court made and duly entered in the office of the Clerk of the County of New York on the 17th day of October, 1949 amending an order of this Court duly entered in the office of the Clerk of the County of New York, on the 2nd day of August 1949, as over-ruled the claim of the State of New York for interest accruing from the date of the filing of the deed of assignment to the date of payment, and which said order reversed so much of the order of this Court duly entered in the office of the Clerk of the County of New York,
51 on the 2nd day of August, 1949, as directed payment of interest on the United States tax claim and penalties only to the date of the filing of the general assignment for the benefit of creditors and from each and every part of said order of reversal; and the said appeal having been duly argued by John D. Kelly and Samuel Stern, of counsel for the respondents United States of America and State of New York respectively and submitted for the appellant, and after due deliberation the Court of Appeals having ordered and adjudged that the order of the Appellate Division of

the Supreme Court appealed from as aforesaid be reversed and the orders of the Special Term affirmed with costs in the Court of Appeals and in the Appellate Division;

Now on reading and filing the remittitur from the said Court of Appeals herein; and upon motion of Gustave A. deLemos, attorney for the assignee herein, it is hereby

ORDERED that the order and judgment of the said Court of Appeals be and the same hereby are made the order and judgment of this Court.

Enter.

——— ———,
J. S. C.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1931 953979 902

Supreme Court of the United States

No. 100, October Term, 1951

[Title omitted.]

Order allowing certiorari

Filed November 5, 1951

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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U. S. GOVERNMENT PRINTING OFFICE: 1951